

HON'BLE MEMBERS.—Yes.

Mr. SPEAKER.—I suppose it is not inconvenient to the Hon'ble Minister.

Sri M. V. RAMA RAO.—I have no inconvenience.

Mr. SPEAKER.—We will take up.

Sri M. V. RAMA RAO.—I move :

“That the Code of Criminal Procedure (Mysore Amendment) Bill, 1965 be taken into consideration.”

CODE OF CRIMINAL PROCEDURE (MYSORE AMENDMENT) BILL, 1965.

Motion to Consider

Mr. SPEAKER.—Motion moved :

“That the Code of Criminal Procedure (Mysore Amendment) Bill, 1965, be taken into consideration.”

† Sri M. V. RAMA RAO.—Sir, this amending Bill seeks to give effect by making legal provision of the existing position in which by means of executive orders Government have already for quite some years past brought into existence the scheme of separation of the executive from the judicial functions of Magistrates under the Code of Criminal Procedure. In the Bombay area the Code of Criminal Procedure has been amended in order to give effect to the scheme of separation of executive from judicial functions. In the Madras area and in the Mysore area this has been effected by issuing Government Orders in exercise of executive authority of the State. This Bill makes an attempt to enact uniform law in respect of scheme of separation of judicial and executive functions of Magistrates. As I said earlier there is really nothing new that is sought to be done by passing this law except giving legal effect to what is already prevalent throughout the State.

The important aspects in considering this Bill to be borne in mind would be with reference to the clothing with authority on executive magistrates and judicial magistrates in respect of certain matters simultaneously in respect of Sections 107, 108, 110, 145 and 147 of the Code of Criminal Procedure. Powers under these sections have been conferred exclusively on executive magistrates in the Bombay area. In the Madras and Mysore areas of the State both judicial and executive magistrates exercise powers under Sections 108, 109 and 110 and in the Mysore Area only Judicial Magistrates exercise powers under Sections 145 and 147. After a careful consideration of the local conditions, it is considered that the powers under the sections referred to above should be conferred both on Judicial as well as Executive Magistrates in the entire State. This will not prevent the Executive Magistrates from exercising powers where the Judicial Magistrate cannot be got within the time necessary.

In regard to Section 167 the power under this Section is exercisable by a Judicial Magistrate in the Bombay Area, by an Executive Magistrate in the Mysore and Hyderabad Areas and by both Judicial and Executive Magistrates in the Madras Area. The number of Judicial Magistrates in the Mysore area is not large, and long distances have to be traversed to obtain orders from such Magistrates. This will hamper proper investigation of offences. It is therefore proposed to confer powers of Section 167 on Magistrates both Judicial as well as Executive.

In regard to Section 174, power is now exercised by Executive Magistrates in the Bombay area, Mysore Area and the Hyderabad Area and in the Madras Area by both Judicial as well as Executive Magistrates. It is considered desirable to empower Judicial as well as Executive Magistrates to exercise power under this section throughout the State. It will be remembered that Section 174 deals with the holding of inquests in the case of alleged suicide and things of that kind and in regard to Section 167, it is a familiar provision. For obtaining orders on judicial remand, a provision had to be made under this Section. Therefore, it is considered that judicial as well as executive Magistrates be empowered to exercise this power to order remand. The scheme of separation is already in existence and has been working more or less on similar lines in other areas of the State and what is proposed to be done is to give legislative effect to what is already obtaining.

With these words I commend this Bill for the acceptance of the House.

Mr. SPEAKER.—What about Section 408, which says :

“ 408. Appeal from sentence of Assistant Sessions Judge or any Magistrate.—Any person convicted on a trial held by an Assistant Sessions Judge or a judicial Magistrate or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380...”
Is it not a new one ?

Sri M. V. RAMA RAO.—For Section 408 of the Code, the new section that is proposed to be substituted provides for appeals from sentence of Assistant Sessions Judge or a junior Magistrate of the Court of Sessions. The amendment is on the same lines as in the Bombay Act.

Sri B. L. GOWDA (Challakere).—Sir, we got this Bill only after we came to the Assembly.

Mr. SPEAKER.—It has been introduced long time back.

Sri V. S. PATIL.—It was introduced long time back, but we never expected that this Bill will come up to-day. We received the agenda yesterday night.

Mr. SPEAKER.—That is why I said that I am prepared to read the Statement of Objects and Reasons. Everybody represented that this might be finished to-day and so it was taken up.

Sri V. S. PATIL.—Sir, I am interested in this Bill. I will offer my remarks to-morrow.

Mr. SPEAKER.—There is no point in just killing the time of the House. It is very embarrassing.

Sri V. S. PATIL.—I should like to ask the Hon'ble Minister.....

Mr. SPEAKER.—We are treating as if the time of the House is quite unimportant. It does not look nice.

Sri M. V. RAMA RAO.—I feel that there is nothing that needs any extensive debate, because, as I was saying in the Bombay area it is already in force.

Sri V. S. PATIL.—By studying a few pages just now, I want to know whether they are in conformity with the law which is existing there or whether there are any changes suggested in this Bill. That is the only thing which I have to study.

Mr. SPEAKER.—Substantially it is the same thing as in Bombay. But there is one sentence in the statement of Objects and Reasons, which says :

“ Opportunity has been taken to make certain other amendments considered necessary.”

We can concentrate on that.

Sri V. S. PATIL.—I have to say something about the Executive Magistrates and the jurisdiction entrusted to them regarding maintenance of peace and order.

Mr. SPEAKER.—That is the same as in Bombay.

Sri M. V. RAMA RAO.—They are of a minor character ; There is nothing really important.

Sri V. S. PATIL.—With reference to this amending Bill, in the Bombay area when that Act was passed, the idea was that the judicial functions of Criminal Codes must be separated from the control or supervision of the executive. The two functions judicial and executive must be quite separate and apart. During the British regime the executive was all supreme and they were the controlling authority even of the judiciary and that is why the District Magistrates in those times were given extensive powers under the Criminal Procedure Code. In order to shift this forum, with a view that the people may get justice according to law without interference of the Executive, the Bill was introduced and it was passed and brought into force in the Bombay area. The one exception made by the then Minister, Sri Morarji Desai was that so far as the maintenance of law and order was concerned, that matter was taken up, was kept with the executive under the name of the Executive Magistrates. But, during the last 10 or 15 years the experience is that the executive is practically harassing the people under this particular jurisdiction, because the Tahasildar or the Assistant Commissioner or the Deputy Commissioner are the persons entrusted with the work of the Executive Magistrates and Chapter VII cases under the Criminal Procedure Code are tried by these Executive Magistrates. The police and especially the persons in power in the local area persuade or prevail upon the Police, to prosecute their opponents under this Chapter. Even on

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the Floor of this House this question was raised several times. One of the Hon'ble Members of this House was hand-cuffed and was taken in a procession under the pretext of this Chapter.

This has become practically an instrument in the hands of the executive to harass the people who do not belong to the Ruling Party. That has become a very very troublesome thing. So, the main intention of separation of executive from the judiciary is that the people must get justice at the hands of persons who are not at all influenced by the executive. That is the main intention and for that reason, separation was thought fit and that has been accepted even by this Government. But the experience so far as this keeping of the peace is concerned, that also must be handed over to the judiciary. I think even the Government will agree with us that the judicial Magistrate when they are made subordinate only to the judiciary, they are working much more efficiently than when they were under the control of the executive. If these chapter proceedings or maintenance of law and order proceedings are also transferred to the courts, then more justice will be done to the people.

Mr. SPEAKER.—All that the Hon'ble member has said does not come within the ambit of this Bill because what is in force in Bombay area is there and that is not going to be changed by this Bill. All that he can say is don't extend it to other areas. If he wants to incorporate what he has got in his mind, it should be done by a separate Bill or by an amendment to this Bill.

Sri V. S. PATIL.—Even in this Bill, the Government can make provision and they may say that executive magistrates are done away with and the whole thing should go to the Judicial magistrate.

Mr. SPEAKER.—The member must accept this Bill and then move an amendment which will be incorporated in the other Act even with regard to Bombay area.

Sri V.S. PATIL.—We accept this Bill. There is no doubt about it. What experience taught us in Bombay area about this executive magistrate should also be taken into consideration and further amendment should be made.

Sri M. V. RAMA RAO.—As a matter of fact, the Hon'ble Member will see that in regard to sections 107, 108 and 110, which I think he was having in mind, the Bill makes provision for the exercise of powers under these sections not merely or exclusively by the executive magistrate as in the State of Bombay or as in the former Bombay area, but by both judicial and executive magistrates.

Sri V. S. PATIL.—I have seen that both judicial magistrate and executive magistrates are to be invested with these powers. But the thing is if both of them are invested with powers, there will be conflict of jurisdiction. That is one thing. The second thing is that if it is left to the Government, they will invest it with the executive magistrate than judicial magistrate.

Mr. SPEAKER.—It can be provided for in the rules that will be placed before the House.

Sri V. S. PATIL.—Why not make a provision here that judicial Magistrates shall try all those cases under Chapter proceedings? If we can make that provision, I think there will be more safety for the people and it will be more in the interest of dispensing justice. For that reason I should like to appeal to the Hon'ble Minister whether he can accept this principle of having complete separation between the two sectors of executive and judiciary.

Sri M. V. RAMA RAO.—The Hon'ble Member knows as an Advocate and a Lawyer that in regard to what are described as chapter proceedings number of cases in which persons accused of various matters or actually bound over to keep peace and keep good behaviour in infinitesimally small and no real apprehension need be entertained in regard to the misuse of authority by the executive Magistrate and I should think that in order that we may not be unfair to the executive magistrates, generally speaking, it ought to be conceded that they are as immune to the exercise of influence from persons in political authority as judicial magistrates are immune and I think Mr. Patil himself will readily concede that it is equally difficult for any political person whether in office or not to exercise influence as it is called over the proceedings before the court whether the presiding officer is a judicial magistrate or an executive magistrate. Therefore, Sir, as I was saying, the present Bill makes provision for exercise of these powers under these sections not only by executive magistrates, but by both classes of magistrates.

Sri V. S. PATIL.—I may bring to the notice of the House that these executive magistrates, Tahasildars, Assistant Commissioners or Deputy Commissioners are touring officers and when chapter cases are filed before them, in order to harass accused, they keep hearing of cases at several places of the District and so, the poor accused has to run from place to place and such cases are dragged on for more than a year. So, Sections 107, 108, 109 and 110 proceedings will be dragged on for a long time and the accused has to go and appear before him at different places. The only intention is to see that the man is punished without passing a sentence. These are the tactics followed. That is why I would like to submit for the information of the Hon'ble Minister that in one of the chapter proceedings filed against my client in Chikodi Taluk, it went on for a year and a half and every time he had to go and attend Assistant Commissioner's Office and then he was discharged. I have filed a suit for damages against the Government for malicious prosecution for Rs. 25,000 and it is pending. That is why I am pointing out that these executive magistrates are not fit persons to do justice. This is an instance I have brought to your notice. These are the ways in which people are harassed by the executive magistrates. That is why judicial magistrates whose offices are fixed at one place should be entrusted with this work.

Mr. SPEAKER.—These chapter proceedings are not of frequent occurrence. They do come at critical times and at inconvenient times. They relate to crops that are raised and harvested.

Sri V. S. PATIL.—At the time of elections, these problems come up.

Sri M. V. RAMA RAO.—Inasmuch as the provision has been made in the Bill for the exercise of powers under these sections by judicial magistrate as well as by executive magistrates, it ought to be possible to prevent executive magistrates in any particular instance from causing harassment on grounds such as described and mentioned by Sri Patil.

Mr. SPEAKER.—Can it be that on certain observations from the Government, the parties might apply for transfer to judicial magistrates.

Sri M. V. RAMA RAO.—The advocate defending persons will always know how to get the proceedings taken over by a judicial Magistrate.

Mr. SPEAKER.—Now, there are no amendments. If Sri V. S. Patil is very keen, I think it will be fair that it should be adjourned. It is important.

4-00 P.M.

Sri V. S. PATIL.—I do accept that this is important, Sir. There is no doubt about it.

Mr. SPEAKER.—But what are the other sections about which the member has objection?

Sri V. S. PATIL.—I have not gone through it, Sir. Day after tomorrow, I will immediately tell you, Sir, whether there are any amendments. If there are no amendments it may be passed within five minutes. Without reading How I can give my opinion?

Mr. SPEAKER.—I am sorry I should not have accepted the suggestion by some Members that it could be passed easily. Anyway, I do not want it to go into record that a Member was not given an opportunity to express his views on an important legislative measure. I suppose it will not inconvenience the Hon'ble Minister if I postpone?

Sri M. V. RAMA RAO.—No, Sir. I only thought it could be passed without much controversy.

Mr. SPEAKER.—I equally thought so. Then we will take it up on the next day. Let this item be the first item on the agenda next day.

Now we go back to the Debate. No names have been given to me. I am prepared to allow the Opposition to begin the debate.

BUDGET ESTIMATES OF THE MYSORE STATE ELECTRICITY BOARD FOR 1965-66.

(Motion to consider)

ಶ್ರೀ ಎಚ್. ಡಿ. ದೇವೇಗೌಡ (ಹೊಳೇನರಸೀಪುರ).—ಸ್ವಾಮೀ, 1964-65 ಹಾಗೂ 1965-66 ನೇ ಸಾಲಿಗೆ ಮಂಡಿಸಿರತಕ್ಕ ಈ ಅಂಶಾಜಾ ಪಟ್ಟಿಯನ್ನು ಚರ್ಚೆ ಮಾಡತಕ್ಕ ಕಾಲದಲ್ಲಿ ಈ ಬೋರ್ಡಿನ ವ್ಯವಹಾರ ಎಷ್ಟರಮಟ್ಟಿಗೆ ನಡೆದಿದೆ, ಯಾವ ಧಾಖೆಯಲ್ಲಿ ನಡೆಯುತ್ತಾ ಇದೆ ಎಂಬ ಬಗ್ಗೆ ಒಂದೆರಡು ವಿಷಯಗಳನ್ನು ಈ ಸಭೆಯು ಗಮನಕ್ಕೆ ತರಬಿಟ್ಟಿರುತ್ತೇನೆ. ಈ ಎರಡೈನಿಟಿ ಬೋರ್ಡ್ ಅಸ್ತಿತ್ವಕ್ಕೆ ಬಂದ ಮೇಲೆ ಯಾವ ಧಾಖೆಯಲ್ಲಿ ಇದು ಜನತೆಯ ಹಿತವನ್ನು ಕಾಪಾಡುತ್ತಾ ಇದೆ ಎಂಬುದನ್ನು ಬಹಳ ಎಷ್ಟಾದದಿಂದ ಹೇಳಬೇಕಾಗಿದೆ. ಈ ದಿವಸ ದೇಶದ ಒಂದು ಅಭ್ಯುದಯ, ದೇಶದ ಒಂದು ಆರ್ಥಿಕಪರಿಸ್ಥಿತಿ ಉತ್ತಮಪಡಬೇಕಾದರೆ ನೀರಾವರಿ ಹಾಗೂ ವಿದ್ಯುಚ್ಛಕ್ತಿ ಅತ್ಯಂತ ಅವಶ್ಯಕ